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Attorneys for Plaintiffs
Richard Sherman and Debra Sherman

CLERK OF DISTRICT COURT

2012 JUL 19 AM 11:28

FILED
BY _____
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

RICHARD SHERMAN and DEBRA
SHERMAN,

Plaintiff,

-v-

NATIONWIDE MUTUAL INSURANCE
COMPANY, ALLIED PROPERTY AND
CASUALTY INSURANCE COMPANY and
Does I & II.

Defendants.

Cause No. DV-12-704D

Judge: DAVID M ORTLEY

SUMMONS

THE STATE OF MONTANA sends greetings to the Defendant:

ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon each of you in the County wherein you reside, and to file your answer and serve a copy thereof upon the Plaintiff's Attorney within twenty-one (21) days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you, by default, for the relief demanded in the Complaint.

Witness my hand and the Seal of said Court this day 17th of July, 2012.

PEG L ALLISON
Clerk of Court

By: NICHOLE BURNS
Deputy Clerk

SUMMONS
Cause No. DV-12-704D
Sherman v. Nationwide Mutual Insurance Company, et al.

EXHIBIT

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2012 JUL 17 PM 4:51

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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

RICHARD SHERMAN and DEBRA
SHERMAN,

Plaintiff,

-v-

NATIONWIDE MUTUAL INSURANCE
COMPANY, ALLIED PROPERTY AND
CASUALTY INSURANCE COMPANY,
and DOES I & II.

Defendants.

Cause No. DV-12- 764D

Judge: DAVID M ORTLEY

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COPY

Comes now Plaintiffs Richard Sherman and Debra Sherman, through counsel, and make claims against Defendants Nationwide Mutual Insurance Company, Allied Property and Casualty Insurance Company and Does I and II as follows:

FACTS

1. Plaintiffs Debra Sherman and Richard Sherman are husband and wife residing in Flathead County, Montana.

COMPLAINT AND DEMAND FOR JURY TRIAL

Cause No. DV-12- 764D

Sherman v. Nationwide Mutual Insurance Company, et.al.

- 1 2. Defendants, on information and belief, were, at times material herein, insurance
2 companies, duly formed and existing under laws of a state other than Montana, that
3 merged into a single insurance company existing under the laws of a state other than
4 Montana. Does I and II, included as potential entities in the combination of insurance
5 companies involved, will be either further identified or dismissed subsequently.
- 7 3. Prior to August 10, 2004, Plaintiffs entered into a contract of insurance with Defendants,
8 which provided for liability, collision, medical pay, property damage, and uninsured and
9 under insured motorist coverage for three Sherman-owned vehicles. Subsequently, on
10 information and belief, Defendants merged into one insurance company, Nationwide
11 Mutual Insurance Company, each succeeding to the obligations of the other.
- 13 4. The afore-mentioned policy of insurance on Plaintiffs' vehicles was in full force and
14 effect on August 10, 2004.
- 16 5. On that date, Plaintiff Richard Sherman, with Plaintiff Debra Sherman as a passenger,
17 was driving in one of the insured vehicles on Managhan Road, in Flathead County,
18 Montana, when the vehicle was struck from behind by a car being driven by an uninsured
19 motorist.
- 21 6. Debra Sherman sustained serious and permanent injuries as a result of the collision.
- 23 7. Ms. Sherman sought medical treatment, chiropractic treatment, and physical therapy in
24 an attempt to abate the pain from her injuries. When those treatments failed to alleviate
25 the pain, she was examined and evaluated by a neurologist and pain management medical
26 doctor. She further underwent, and, in order to control the permanent pain, will need to
27 continue to undergo extremely painful treatments, including radiofrequency
28 thermocoagulation.

1 8. The injuries suffered by Ms. Sherman resulted in loss by Plaintiff Richard Sherman of
2 the services and companionship of his wife.

3 9. The injuries further resulted in a loss of established course of life for Plaintiffs.

4 10. When Plaintiffs were told that Ms Sherman's condition and need for treatment was
5 permanent, Plaintiffs provided to Defendants the cost of medical care to date and into the
6 future, as well as a quantification of other damages resulting from the collision with the
7 uninsured motorist vehicle and demanded that Defendants honor the terms of the contract
8 of insurance.
9

10 11. Defendants did not timely respond to the demand.
11

12
13 I. BREACH OF CONTRACT

14 For their first claim, Plaintiffs re-allege the facts set forth in paragraphs 1-11 above as if
15 set forth herein, and further allege:

16 12. The contract upon which this action is based was made and was to be performed in the
17 Flathead County, Montana.

18 13. Plaintiffs have performed all of the conditions, covenants and promises required by it to
19 be performed in accordance with the terms and conditions of the insurance contract,
20 including making all premium payments for said insurance.
21

22 14. The collision on August 10, 2004 implicated multiple coverages of the insurance contract
23 between Plaintiffs and Defendants.

24 15. Defendants, and each of them, breached the contract with plaintiff by failing and refusing
25 to satisfy their obligations under the terms and conditions of the contract, that is, to
26 compensate Plaintiffs for their covered losses, up to the limits of policy coverage.
27
28

1 Demand has been made on Defendants, and each of them has failed and refused and
2 continue to fail and refuse, to pay all sums owing under the contract.

3 16. Plaintiffs have been damaged by Defendants' breach in an amount to be determined by
4 proof.
5

6
7 II. ATTORNEY FEES

8 For their second claim against Defendants, Plaintiffs re-allege the facts and allegations
9 set forth in paragraphs 1-16 as if fully stated herein, and further allege:

10 17. Defendants, in contravention of their fiduciary duty, have forced Plaintiffs to assume the
11 burden of legal action to obtain the full benefit of the insurance contract.

12 18. Plaintiffs, therefore, seek recovery of legal fees and costs of litigation in this action.
13
14

15 III. UNFAIR CLAIM SETTLEMENT PRACTICE VIOLATIONS

16 For their third claim against Defendants, Plaintiffs re-allege the facts and allegations set
17 forth in paragraphs 1-17 as if fully stated herein, and further allege:

18 19. Defendants have violated MCA§33-18-201 including, but not limited to:

- 19 a. Notwithstanding that Plaintiffs have provided to Defendants proof of medical and
20 other costs, Defendants failed to acknowledge and act reasonably promptly upon
21 the demand letter sent by Plaintiffs to Defendants;
22
23 b. Defendants misrepresent pertinent facts or insurance policy provisions relating to
24 coverages at issue;
25
26 c. Defendants attempted to settle Plaintiffs' claim for less than the amount to which
27 a reasonable person would have believed Plaintiffs entitled;
28

1 d. Defendants forced Plaintiffs to institute this litigation to recover amounts due
2 under the insurance policy.

3 20. Plaintiffs have suffered damages as a result of the handling of this insurance claim and
4 bring this claim pursuant to MCA§ 33-18-242 for recovery of those damages.
5
6

7 WHEREFORE, Plaintiffs request judgment as follows:

- 8 a. For an amount which will compensate Plaintiffs for all the detriment which was
9 proximately caused by Defendants' breach of contract or in the ordinary course of
10 things would be likely to result therefrom;
11 b. For attorney fees for breach of contract;
12 c. For an amount which will compensate for all the detriment proximately caused by
13 violation of Montana's Unfair Claims Practices Act, whether it could have been
14 anticipated or not;
15 d. For such other and further relief, at law or in equity, to which plaintiff may be
16 entitled and which the court deems just and proper.;
17 e. For costs of suit.
18
19
20

21 Respectfully Submitted this 17 day of July, 2012

22 MORRISON & FRAMPTON, PLLP

23 By: Sharon M. Morrison
24 Sharon M. Morrison
25 Attorneys for Plaintiffs
26
27
28

JURY DEMAND

Plaintiffs make demand for a jury on all issues triable by a jury.

DATED this 17 day of July, 2012.

MORRISON & FRAMPTON, PLLP

By: Sharon M. Morrison
Sharon M. Morrison
Attorneys for Plaintiffs